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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 390

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

vs.

**JOHN M. DANIEL, AS ATTORNEY GENERAL OF THE STATE
OF SOUTH CAROLINA, AND W. P. BLACKWELL, AS SECRETARY
OF STATE OF THE STATE OF SOUTH CAROLINA**

**APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH
CAROLINA**

STATEMENT AS TO JURISDICTION

**J. B. S. LYLES,
W. R. C. COCKE,
Counsel for Appellant.**

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IN THE SUPREME COURT, OF
THE STATE OF SOUTH CAROLINA

Case No. 2807

SEABOARD AIR LINE RAILROAD COMPANY,
Plaintiff,

vs.

JOHN M. DANIEL, AS ATTORNEY GENERAL OF THE STATE
OF SOUTH CAROLINA, AND W. P. BLACKWELL, AS SECRETARY
OF STATE OF THE STATE OF SOUTH CAROLINA

Defendants

IN THE ORIGINAL JURISDICTION

**STATEMENT AS TO JURISDICTION OF THE
SUPREME COURT OF THE UNITED STATES**

Pursuant to the requirements of Rule 12 of the Supreme Court of the United States plaintiff presents this separate statement particularly disclosing the basis upon which plaintiff contends that the said Supreme Court of the United States has jurisdiction to review the final judgment of this Court entered in the above entitled cause on August 29th, 1947. Such basis is as follows:

1. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Section 237 of the Federal Judicial Code as amended (28 U. S. C. A. Section 344).

2. The constitutional and statutory provisions of the State of South Carolina the validity of which is involved in this suit are as follows:

Section 8, Article 9 of the Constitution of the State of South Carolina 1895—Code of Laws of South Carolina 1942, Volume 1, pages 1305 and 1306.

No foreign corporation can build or operate a railroad in this State—no general or special law for foreign corporation, except on conditions. The General Assembly shall not grant to any foreign corporation or association a license to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein.

Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under any existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon the condition that the owners or stockholders thereof shall first organize a corpo-

ration in this State under the laws thereof; and shall thereafter operate and manage the same and the business thereof under said domestic charter.

Section 7777—Code of Laws of South Carolina 1942,
Volume 4, pages 505 and 506

Requisites for obtaining charter. The owners or stockholders of each and every railroad company created or organized or by virtue of the laws of any government or State, other than this State, desiring to own property or carry on business or exercise any corporate franchise in this State whatsoever, shall, either in their names or by such persons, as they shall designate, first apply for a charter and become incorporated, as a corporation of this State, in the manner provided by chapter 159. At least one of the petitioners for such charter of incorporation, and at least one of the incorporators of such railroad companies shall be a resident of this State.

Section 7778—Code of Laws of South Carolina 1942,
Volume 4, page 506

How foreign railroad companies may do business in this State. Each and every railroad company created or organized under and by the laws of any government or State, other than this State, and now operating, any railroad in this State, either as the owners thereof or otherwise, or carrying on any business or exercising any corporate franchise in this State, shall, on or before the first day of June, 1902, apply for a charter of incorporation under the laws of this State, in the manner directed in section 7777, and no such railroad company shall carry on business or exercise any corporate franchise in this State after the said date, without having complied with the provisions of Sections 7777 thru 7779 and 7783 thru 7787.

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Section 7779—Code of Laws of South Carolina 1942,
Volume 4, page 506

One of the corporators must be resident. No charter shall be granted to any such railroad company under the provisions of Sections 7777 thru 7779 and 7783 thru 7787, or of chapter 159 unless at least one of the corporators is a resident of this State, and all privileges heretofore acquired by any such railroad companies doing business in this State, are hereby revoked and repealed, on and after June 1, 1902, unless such companies have complied with the requirements of Sections 7777 thru 7779 and 7783 thru 7787.

Section 7784—Code of Laws of South Carolina 1942,
Volume 4, page 507

Penalty for failure to comply with law. It shall be unlawful for any such foreign railroad company to do business, or attempt to do business, in this State without first having complied with the requirements of Sections 7777 thru 7779 and 7783 thru 7787. Any violation of Sections 7777 thru 7779 and 7783 thru 7787 shall be punished by the forfeiture to the State by the party offending of a penalty of five hundred dollars, to be recovered by suit in the court of common pleas, for each and every county in which such offender does, or attempts to do, business, or in any other court of competent jurisdiction. And it shall be the duty of the attorney general to bring suit for recovery of such penalty for each and every offense.

Section 7789—Code of Laws of South Carolina 1942,
Volume 4, pages 508 and 509

Foreign companies must comply. It shall be unlawful for any such foreign corporation to do business, or attempt to do business, in this State without first having complied with the requirements of this chapter, and any violation of this

chapter shall be punished by the forfeiture to the State, by the party offending, of a penalty of five hundred dollars, to be recovered by suit in the court of common pleas for any county in which such offender does, or attempts to do, business, or any other court of competent jurisdiction.

Section 7785—Code of Laws of South Carolina 1942,
Volume 4, page 508

Consolidations of railroad companies. The provisions of Sections 7777 thru 7779 and 7783 thru 7784 shall in no way abrogate or repeal the right of railroad companies to consolidate according to law or effect consolidation already made according to law, when at least one of the corporations so consolidating is a corporation of this State, with corporators resident in this State.

3. The date of the judgment sought to be reviewed is August 29th, 1947.

4. The nature of the case and the rulings of the Supreme Court of South Carolina bringing the case within the jurisdictional provisions relied on and the cases believed to sustain the jurisdiction are as follows:

Plaintiff Seaboard Air Line Railroad Company (hereafter referred to as the new company) is a corporation organized and existing under the laws of the State of Virginia. It is the successor in ownership and operation of the properties of the Seaboard Air Line Railway Company (hereafter referred to as the old company), constituting a railroad system comprising approximately 4200 miles of railroad lines within and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama and is a common carrier of freight and passengers by railroad subject to the provisions of the Acts of Congress relating to interstate commerce. Plaintiff was organized

for the purpose of carrying out the plan of reorganization of the old company which plan was approved by the Interstate Commerce Commission and by the United States District Courts having jurisdiction of the reorganization proceedings.

Pursuant to said reorganization plan and with the approval of the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act as amended (49 U. S. C. A. 5) plaintiff acquired, and on August 1st, 1946, prior to the filing of this suit on August 7th, 1946, commenced operation of the railroad system and properties above described. Included in such properties are 736 miles of railway main lines located in thirty counties in the State of South Carolina and lying between various points in the State and connecting with points on the system in North Carolina and Georgia. In addition plaintiff owns over 600 separate tracts of miscellaneous real estate in South Carolina which are appurtenant to or are used or usable in connection with the operation of said system of railways.

Plaintiff applied to the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act as amended by the Transportation Act of 1940 to acquire, own and operate as a common carrier the said railroad properties. The said Interstate Commerce Commission upon hearing after due notice to the Governor of South Carolina as provided by Section 5 (2) (b) of the said Interstate Commerce Act issued its decision and order authorizing such acquisition, ownership and operation.

The pertinent provisions of Section 5 of the Interstate Commerce Act conferring such authority upon the Commission are as follows:

“(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

"(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

“(b) Whenever a transaction is proposed under subparagraph (a), the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicles are involved, the persons specified in section 305 (e)), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing, and a public hearing shall be held in all cases where carriers by railroad are involved. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and author-

izing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6), is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

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“(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the anti-trust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the trans-

action so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter under the laws of any State."

The Commission in its report and decision rendered June 29th, 1946, held that plaintiff was, by reason of the provisions of Section 5 of the Interstate Commerce Act, relieved of the requirements of the South Carolina constitutional and statutory provisions requiring separate incorporation in South Carolina or consolidation with a South Carolina corporation thereby becoming a corporation of said State, because compliance with such requirements would be contrary to the Transportation policy of Congress as announced in the Interstate Commerce Act as amended by Transportation Act of 1940 and such compliance would operate as an undue burden upon interstate commerce.

5. On or about the 6th day of August 1946 plaintiff applied to the defendant W. P. Blackwell as Secretary of the State of South Carolina for admission to do business in South Carolina as a foreign corporation pursuant to Sections 7765, 7766 and 7767 of the Code of South Carolina, 1942, by tendering to him for filing a written statement or declaration in due form together with all copies of statements as well as fees required by the said sections. At the same time plaintiff exhibited to the Secretary of the State a certified copy of the report and order of the Interstate Commerce Commission and explained by letter handed to him at the same time that thereby plaintiff was lawfully re-

lieved from compliance with the provisions of the Constitution and statutes of South Carolina hereinbefore set forth requiring plaintiff to become a corporation of South Carolina. The defendant Secretary of State declined to accept said documents relying upon the provisions of Section 8 of Article 9 of the Constitution of South Carolina and the Sections of the South Carolina Code of 1942 above referred to.

The said statutes of South Carolina provide no method by which plaintiff could test in advance the validity as to plaintiff of Section 8 of Article 9 of the Constitution of South Carolina and of Sections 7777, 7778, 7779, 7784, 7785, and 7789 of the Code of South Carolina, 1942. Accordingly, plaintiff was confronted with the dilemma of either disobeying the order of the Interstate Commerce Commission and failing to perform its public duties as a common carrier in South Carolina or of subjecting itself to the danger of repeated suits in thirty different counties for the recovery of fines and penalties imposed by Section 7784 and 7789.

Since the railroad lines owned and operated by plaintiff in South Carolina lie in thirty separate counties in the State, the aggregate of the penalties would be Fifteen Thousand Dollars (\$15,000.00) a day and almost Five and One-Half Million Dollars (\$5,500,000.00) a year.

6. Thereupon on the 7th day of August 1946 plaintiff presented its complaint in the original jurisdiction of the Supreme Court of South Carolina the court of last resort of said State alleging the invalidity of the constitutional and statutory provisions of South Carolina hereinbefore referred to, asserting the right of plaintiff to operate its system of railroads in South Carolina without becoming a corporation of said State and praying that a writ of mandamus be issued to the Secretary of State requiring him to accept qualification of plaintiff as a foreign corpora-

tion and praying also that the defendant John M. Daniel as Attorney General of South Carolina be restrained and enjoined from enforcing the penalties provided by the South Carolina statutes for non-compliance with the requirements that plaintiff become a corporation of South Carolina as a condition to its right to own and operate its properties in said State.

The complaint asserted:

(a) That the aforesaid constitutional and statutory provisions of South Carolina are in conflict with the provisions of Section 5 of the Interstate Commerce Act and with the decision and order of the Commission issued pursuant to the authority conferred on it by such Act;

(b) The said constitutional and statutory provisions are invalid for the additional reason that they prohibit a railroad corporation from operating in South Carolina without separate incorporation or consolidation with a South Carolina corporation thereby becoming a corporation of said State even in interstate commerce. The said constitutional and statutory provisions are not confined to prohibition against operation in intrastate commerce but indiscriminately prohibit any operation at all without compliance with said provisions. Said provisions are therefore void as constituting in and of themselves a burden on interstate commerce in violation of Clause 3 of Section 8 of Article 1 of the Constitution of the United States and moreover deprive plaintiff of its property without due process of law and deny to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the said Constitution of the United States.

(c) Plaintiff also asserted in its complaint and in its brief in the said Supreme Court of South Carolina that the Interstate Commerce Commission, in the exercise of its

powers conferred upon it by Section 5 of the Interstate Commerce Act could validly confer and did confer authority upon plaintiff to acquire, own and operate its railroad properties in South Carolina as a common carrier in interstate commerce, without compliance with the constitutional and statutory requirements of South Carolina, regardless, and without the necessity of any finding or decision by the Commission that compliance by plaintiff with said constitutional and statutory provisions would impose an undue burden upon interstate commerce.

7. Upon presentation of the complaint the court entered an order dated August 7th, 1946, directing the complaint to be filed, accepting jurisdiction, and restraining the defendant John M. Daniel as Attorney General of the State of South Carolina from enforcing or attempting to enforce Section 7784 or Section 7789 of the Code of South Carolina against plaintiff or collecting or attempting to collect any penalties above described from plaintiff pending further order of the court.

The Federal questions sought to be reviewed on this appeal were raised fully by complaint of plaintiff, by the answer of the defendants to the complaint and by the demurrer of plaintiff to the answer. The case was submitted to the Supreme Court of South Carolina alone on the complaint of plaintiff, the answer of the defendants and the demurrer to the answer and was finally decided by the State Supreme Court on the issues made by those pleadings. No evidence was introduced. The material facts alleged in the complaint were not disputed or denied by the answers and the issues created by the pleadings were and are solely issues of law.

The opinion of the Supreme Court of South Carolina, annexed hereto, squarely decided the Federal questions presented by the complaint of the plaintiff, the answer of

the defendants, and the demurrer to the answer, and held adversely to the claims of Federal right asserted by plaintiff, and denied the right and privilege specially set up and claimed under the Interstate Commerce Act as amended and under the order of the Interstate Commerce Commission hereinbefore referred to, made pursuant to Section 5 of said Act.

The opinion of the Supreme Court of South Carolina is also in direct conflict with the decision of this Court in *Texas v. United States*, 292 U. S. 522, respecting the power conferred on the Interstate Commerce Commission by Section 5 of the Interstate Commerce Act as amended and such conflict should be resolved.

The cases believed to sustain jurisdiction of the Supreme Court of the United States on this appeal are: *Western Turf Assn. v. Greenberg*, 204 U. S. 359; *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U. S. 182; *Senn v. Tile Layers Protective Union, Local No. 5*, 301 U. S. 468; *Commonwealth of Virginia v. Imperial Coal Sales Co.*, 293 U. S. 15; *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192; *Municipal Investors Assn. v. City of Birmingham*, 316 U. S. 153; *Miller v. Schoene*, 276 U. S. 272; *Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace*, 288 U. S. 249; *Home Insurance Co. v. Dick*, 281 U. S. 397; *Brotherhood of Railroad Trainmen v. Terminal Railroad Assn. of St. Louis*, 318 U. S. 1; *Alabama & V. Railway Co. v. Jackson & E. Railway Co.*, 271 U. S. 244; *United States v. New York Central R. Co.*, 272 U. S. 457; *Texas v. United States*, 292 U. S. 522; *Donald v. Philadelphia & R. C. & O. Co.*, 241 U. S. 329; *Ex Parte Young*, 209 U. S. 123.

8. The way in which the Federal questions were passed upon by the Supreme Court of South Carolina was that the Court took briefs and oral arguments of counsel for the parties upon the issues made by the pleadings and on

August 29th, 1947, rendered its written opinion and final judgment, a copy of which is annexed to this statement as Exhibit A, holding that plaintiff was not entitled to the relief prayed for and ordering that the complaint be dismissed.

9. The grounds upon which it is contended that the questions on this appeal are substantial are as follows:

Plaintiff relies upon the decision and order of the Interstate Commerce Commission authorizing it to acquire, own and operate its properties in South Carolina without compliance with the constitutional and statutory requirements of that State hereinbefore set forth. Plaintiff promptly took the necessary steps to assert the rights granted by the Commission pursuant to its authority under Section 5 of the Interstate Commerce Act and to protect such rights by the institution of suit in the Supreme Court of South Carolina. The steps adopted for the assertion and protection of such rights were orderly and timely and without such steps plaintiff would have subjected itself to repeated suits for penalties under the South Carolina law and remained in uncertainty as to its status under the order of the Commission. The issues and questions raised by the suit involve directly the scope and interpretation of Section 5 of the Interstate Commerce Act and the power of the Interstate Commerce Commission, regardless of the Constitution and statutes of South Carolina, to authorize plaintiff to own and operate its railroad properties in South Carolina as a common carrier in interstate commerce.

Such issues and questions also involve the constitutional right of plaintiff under the Commerce Clause of the Federal Constitution, and apart from any affirmative authority from the Interstate Commerce Commission, to operate its railroad properties in South Carolina without becoming a corporation of said State.

If the plaintiff's contentions are correct, the State constitutional and statutory provisions are void and unenforceable as in conflict with the Federal Constitution and the provisions of Section 5 of the Interstate Commerce Act and also because the State law in prohibiting a common carrier by railroad from operating in interstate commerce without becoming a corporation of South Carolina is void as an undue burden upon interstate commerce. If the decision and judgment of the Supreme Court of South Carolina is correct, the Interstate Commerce Commission exceeded its powers under the Act. The complications, burdens, and expense incident to compliance by plaintiff with the South Carolina laws are described in the report and decision of the Commission. It is therefore in the public interest that the grave and important questions of constitutional law presented by this record be decided by the Supreme Court of the United States.

Respectfully submitted,

J. B. S. LYLES,

W. R. C. COCKE,

Attorneys for Plaintiff-Appellant.

EXHIBIT A**THE STATE OF SOUTH CAROLINA, IN THE
SUPREME COURT****SEABOARD AIR LINE RAILROAD COMPANY,***Plaintiff,***vs.****JOHN M. DANIEL, as Attorney General of the State of South
Carolina, and W. P. BLACKWELL, as Secretary of State
of the State of South Carolina,***Defendants***In the Original Jurisdiction****Case No. 2807****Opinion No. 15984****Filed August 29, 1947****Complaint Dismissed**

W. R. C. Cocks, of Norfolk, Va., and J. B. S. Lyles, of
Columbia, for plaintiff.

Attorney General John M. Daniel and Assistant Attor-
neys General M. J. Hough and T. C. Callison, for defendants.

FISHBURNE, A.J.: On June 28, 1946, the Interstate Com-
merce Commission, acting under the authority purportedly
conferred upon it by Section 5 of the Interstate Commerce
Act (49 U. S. C. A. 5), issued its report and order upon
the application of the Seaboard Air Line Railroad Company,
hereinafter referred to as the new company, authorizing it
to purchase and reorganize the Seaboard Air Line Railway
Company, sometimes referred to as the old company, which
had been in receivership since 1930. The Commission fur-
ther ordered that the Seaboard Air Line Railroad Com-
pany, a Virginia corporation, could operate its railroad
lines and other properties in South Carolina without com-
plying with Section 8 of Article IX of the state Constitution
and with Sections 7777 through 7779 of the Code, which

prohibit a foreign corporation from acquiring or operating a railroad in this state without first incorporating and obtaining a charter.

It was affirmatively ordered that the delay and expense which would be incurred should the reorganized railroad company undertake to comply with the Constitution and statutes of South Carolina as to incorporation, would not accord with the national transportation policy, would burden interstate commerce, and would not be consistent with the public interests.

Shortly after the filing of the Commission's order, this action was brought by the plaintiff in the original jurisdiction of this court, by permission duly granted, praying three distinct forms of relief:

(1) A declaratory judgment adjudging that plaintiff is entitled to operate its railroad lines through South Carolina without complying with the constitutional provisions and the applicable statutory laws of the state;

(2) For an order of mandamus directed to the secretary of state requiring him to accept and file certain documents tendered by the plaintiff under the general corporation law covered by Sections 7765 and 7766 of the Code, which authorize a foreign corporation, other than a railroad company, to do business in South Carolina,

(3) An injunction against the attorney general restraining him from enforcing or attempting to enforce the provisions of Section 7784 or Section 7789 of the Code under which sections a railroad company is penalized for its failure to comply with the constitution and the laws of the state relating to incorporation.

In the order allowing the institution of this action in the original jurisdiction of the court, the attorney general was restrained, pending the further order of the court, from enforcing or attempting to enforce the penalty provisions of the Code above referred to, applicable when a railroad company fails to comply with those sections relative to obtaining a charter in this state.

The defendants, who are constitutional officers of the state of South Carolina, assail the order of the Interstate

Commerce Commission as transcending the power granted to the Commission by the Congress under the Interstate Commerce Act. They filed an answer and return raising this issue, and the plaintiff filed a demurrer to the answer. The case now comes before us on issues raised by the pleadings.

The major issue presented is whether the report and order of the Interstate Commerce Commission is valid and effective under Section 5 of the Interstate Commerce Act to relieve the plaintiff from compliance with the constitutional and statutory provisions of South Carolina which prohibit a foreign railroad company from acquiring and operating a railroad in this state without first obtaining a charter. And, further, did the Interstate Commerce Commission go beyond its jurisdiction and into a field into which it was not directed by the Act of Congress, in undertaking to say in what state a railroad corporation should be chartered, and in what state it should not be chartered, regardless of the constitution and statutes of any particular state. There are subsidiary questions, but a determination of the main issue will dispose of the case.

The plaintiff, under the order of the Interstate Commerce Commission, is the successor in ownership and operation of the properties of the old company which constitute an extensive railroad system, comprising approximately 4200 miles of railroad lines within and through the states of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. Plaintiff acquired these railroad lines pursuant to the plan of reorganization approved by the Commission, and since such acquisition has been operating them as a common carrier of freight and passengers by railroad.

Included in such properties now owned and operated by the plaintiff are 736 miles of railroad located within and through thirty counties of the state of South Carolina, which embrace several of its main trunk lines. In addition, plaintiff owns over 600 miscellaneous separate tracts of real estate situated in the state of South Carolina which are appurtenant to and used or useful in connection with the operation of its system of railroads.

As stated, the plaintiff is a corporation of Virginia. It appears from the record that the states of North Carolina,

Georgia, Alabama, and Florida, do not require foreign railroad companies to incorporate. Railroad companies operate within their boundaries as foreign corporations, but are not compelled to obtain a charter therein. The plaintiff knew when it applied to the Interstate Commerce Commission under the plan of reorganization to purchase and operate the railroad system of the old company through South Carolina and the other named states, that it would be required to become a corporation of South Carolina under the constitution and laws of this state. Notwithstanding this, plaintiff made its application to the Commission alleging that it was advised that it would have power to acquire and operate the railroad system of the old company in South Carolina irrespective of the constitutional and statutory requirements—if such acquisition and operation should be authorized by the Interstate Commerce Commission.

The following statement is found in the report and order of the Interstate Commerce Commission:

“It would clearly be an unnecessary and undue burden on interstate commerce for the new company to be subjected to continuing expenses of over \$300,000 a year to maintain a separate corporation to own and operate the railroad in South Carolina. It is not so clear, however, that the cost of organizing a corporation under the laws of South Carolina to acquire the properties in that state and thereafter consolidate the South Carolina corporation with the Virginia corporation, viz, \$71,800, or the cost of maintaining the consolidated corporation as a South Carolina corporation, viz, \$1,000 a year, would be unduly burdensome. Organization of a South Carolina corporation, and consolidation with the Virginia corporation, however, would cause substantial delay and needless expense.”

The Commission went on to find:

“The provisions of Section 5 were further amended by the Transportation Act of 1940 which contains a declaration of the national transportation policy. The provisions as to relief from restraints, limitations and prohibitions of state law which would stand in the way of execution of the policy

of Congress were clarified and strengthened. In administering the provisions of Section 5 and other provisions of the Act we must do so with a view to carrying out the declared policy of Congress, including the promotion of economical and efficient service and the fostering of sound economic conditions in transportation. Corporate simplification wherever possible is in accord with this policy. Furthermore, a termination of a long-standing receivership of railroad properties is always a matter of substantial public interest. The delays that would result and the needless expense that would be incurred should the new company undertake to comply with the constitution and statutes of South Carolina requiring the creation of a separate corporation to acquire, or to acquire and operate, the railroad which the new company proposes to acquire and operate in that state would not accord with the national transportation policy and would not be consistent with the public interest."

It is conceded that this court has jurisdiction to determine whether the order of the Commission was a valid or invalid exercise of power under Section 5 of the Interstate Commerce Act.

The supremacy of congressional legislation over the entire subject of interstate commerce and its instrumentalities has been upheld in numerous cases. Among them may be cited the following: *Houston E. & W. T. R. Co. v. United States*, 234 U. S. 342, 58 L. Ed. 1341; *Alabama and V. Ry. Co. v. Jackson and E. Ry. Co.*, 271 U. S. 244, 46 S. Ct. 535; *Texas v. United States*, 292 U. S. 522, 54 S. Ct. 819; *Morgan v. Commonwealth of Virginia*, 328 U. S. 373, 90 L. Ed. 1317, 66 S. Ct. 1050, 165 A. L. R. 574.

The defendants raise no question as to the constitutional power of the Congress to confer authority upon the Commission to approve the purchase and reorganization of the old Seaboard Air Line Railway Company. The question here has to do simply with the scope of the authority which has been conferred.

The statutory provisions are found in Section 5 of the Interstate Commerce Act, Paragraph 11, and are as follows:

"The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation partici-

participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required upon applicable state law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under state authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the anti-trust laws and of all other restraints, limitations and prohibitions of law, Federal, State, or municipal insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchise acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any state."

Under the foregoing provisions, any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall be relieved from the operation of: (a) the anti-trust laws, and (b) all other restraints, limitations and prohibitions of law, Federal, State or municipal *insofar as may be necessary* to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, manage, and

operate any properties and exercise any control or franchise acquired through such transaction.

We think it clear from the whole quoted section that the prohibition against the creation, directly or indirectly, of a federal corporation likewise excluded any power to control, limit or prohibit incorporation under state laws. And it follows that no power was conferred upon the Commission to say in what state or states a railroad company may be incorporated or not incorporated. The Act says that any power granted to any carrier "shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any state." The Commission has undertaken to say, in this transaction whereby the plaintiff has acquired the properties of the old company, that the constitution and laws of South Carolina regarding incorporation may be overridden and disregarded when no such explicit authorization was granted by the Congress.

No case directly in point has been called to our attention. The case relied upon strongly by the plaintiff, which it is asserted most nearly approximates the facts in the instant case, is *Texas v. United States*, 292 U. S. 522, 54 S. Ct. 819. In that case the court held that the Interstate Commerce Commission, in the exercise of the authority conferred upon it by Section 5 of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933, was empowered to approve a lease of the property of one railroad company to another which permitted the lessee to abandon or to remove from the state of the lessor's incorporation the railroad shops and offices, where a marked saving would result from such abandonment or removal.

It was stated that this approval was authorized notwithstanding a statute of the state of Texas requiring the lessor to retain its general offices within the state, and forbidding it from changing the location of its general offices, machine shops, or round houses save with the consent and approval of the state railroad commission. In the Texas case the question was not involved as to whether or not a railroad company must obtain a charter from Texas to operate therein. The question as to what state or states should grant charters to the railroads operating in Texas was not

raised. The Commission had to deal only with the physical operation of the railroad as such operation might relate to the best interest of commerce and to insure adequate transportation service.

The Interstate Commerce Act not only fails to specifically grant authority to the Commission to deal with the matter of charters, but it may be inferred, as we have pointed out, from the language used that the purpose of congress was to prohibit the Commission from directly or indirectly determining what state or states a railroad company should be incorporated in.

Unquestionably, the Commission acted within the scope of its authority in passing upon and approving the details of the reorganization plan of the Seaboard Air-Line Railway, its method of financing, and whether the reorganization plans were for the best interest of interstate commerce. But it is far from clear that the Act conferred upon it the power to discriminate, in effect, against any state or states by adjudging in what state a charter should be granted.

The plaintiff contends that to comply with the statutes of South Carolina and the constitutional provision requiring that railroads operating in this state should obtain a charter, would impose an undue burden on interstate commerce.

As shown by the report and order of the Commission, the cost incident to obtaining a South Carolina charter is negligible as compared with the millions of dollars in value of the physical properties and the millions of dollars of income owned and controlled by the plaintiff. It might be inconvenient or undesirable to obtain a South Carolina charter, but we do not see how such requirement would constitute a burden on interstate commerce.

Holding as we do that the Interstate Commerce Commission lacked the power under Section 5 of the Interstate Commerce Act to authorize the plaintiff to operate its railroad lines in this state without first obtaining a charter, it necessarily follows that the complaint should be dismissed and the restraining order heretofore granted revoked.

It is so ordered.

Baker, CJ., Stukes, Taylor and Oxner, JJ., concur.